Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	
To Ensure Compatibility with	)	CC Docket No. 94-102
Enhanced 911 Emergency Calling Systems	)	RM-8143
	)	
	)	
	)	
	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 23, 2001 **Released: May 25, 2001**

Comment Date: July 9, 2001
Reply Comment Date: August 8, 2001

By the Commission:

I. INTRODUCTION AND OVERVIEW

1. This Notice of Proposed Rulemaking examines further the issue of non-service-initialized mobile wireless phones (noninitialized phones)[1] used to make 911 calls and whether such phones should provide for call back by Public Safety Answering Points (PSAP). The Notice is precipitated by a request for further consideration of this issue filed by several public safety entities (the Public Safety Entities),[2] and our recognition, expressed in earlier orders, that the absence of call back capability is an important public safety issue. In this notice we consider and seek comment on several possible solutions addressing various aspects of the call back issue as well as the possibility of a general, technical solution that would apply to all noninitialized handsets. We seek comment from interested parties to determine whether these or other solutions identified for the call back problem, or some technical solution applicable to all non-initialized handsets, will further the goals of our 911 rules, are technically feasible, and offer cost-effective solutions to this difficult issue.

[1] Non-service-initialized wireless phones are phones that are not registered for service with any Commercial Mobile Radio Service (CMRS) carrier. Because carriers generally assign a dialable number to a handset only when a customer enters into a service contract, a non-initialized phone lacks a dialable number.

[2] *See* Letter to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, dated April 28, 2000, filed by the following public safety entities: the Texas Commission on State Emergency Communications and 16 local Texas Emergency Communications Districts, the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc., and the National Association of State Nine-One-One Administrators (Letter of April 28, 2000).

II. BACKGROUND

2. On December 23, 1997, the Commission issued the *E911 First Memorandum Opinion and Order* in the above-referenced proceeding, in which it reviewed, on reconsideration, decisions made in the *E911 First Report and Order* requiring covered CMRS carriers, *inter alia*, to forward all 911 calls regardless of their service-subscription status.[3] In response to requests for clarification concerning these carriers' obligations to provide call back capability for wireless 911 calls, the Commission acknowledged that call back capability may not be available for handsets not presently serviced by a wireless carrier, such as those that have never been service-initialized, or those for which the subscription to wireless service has lapsed. Therefore, the Commission determined in the *E911 First Memorandum Opinion and Order* that the carrier's obligation in such cases is limited to delivering the 911 call to the PSAP, but stated that it would revisit the issue at a later stage in the ongoing E911 proceeding.[4]

3. On April 28, 2000, the Public Safety Entities requested that the Commission "take additional comment and revisit the call back number issues to determine if any further Commission action is necessary or appropriate."[5] According to the Public Safety Entities, a technical solution to the call back issue is necessary because noninitialized phones provide either no dialable call back number or inaccurate information when used in areas where E911 Phase I services have been implemented, and thus defeat the Commission's objective to ensure the protections of 911 service for wireless as well as wireline customers.[6] Two major types of wireless phones are subsumed by this category: (1) phones that were previously, but are no longer, service initialized by a wireless carrier and have been reissued under some type of donor program, such as phones donated to a domestic violence protection program, and (2) newly manufactured 911-only phones that can only make 911 calls and are incapable of receiving any incoming calls.[7]

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[3] *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order and Further Notice of Proposed Rulemking*, 11 FCC Rcd 18676, 18692-97 (paras. 29-42) (1996) (*E911 First Report and Order)*. *See also* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22717-19 (paras. 108-110) (1997) (*E911 First Memorandum Opinion and Order)*

[4] *E911 First Memorandum Opinion and Order*, 12 FCC Rcd at 22717-19 (paras. 108-110). *See also* 47 CFR 20.18(d)(2).

[5] Letter of April 28, 2000 at 3.

[6] Under Phase I, wireless carriers receiving a 911 call "must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI." *See* 47 CFR 20.18(d)(1).

[7] There are several additional categories of E911 calls for which call back capability may not be available. These include out-of-service-area 911 calls where no roaming agreement exists between the caller's carrier and the carrier handling the 911 call and 911 calls from phones transferred among friends or family members after the original owner's wireless service subscription has lapsed.

4. On May 18, 2000, the Wireless Telecommunications Bureau issued a Public Notice[8] soliciting public comment on the issue of call back for noninitialized phones. Thirteen parties filed comments, and six parties filed reply comments in response to the Commission's request for comment on the call back issue.[9] Conflicting assertions received in response to the Public Notice regarding technological constraints on call back capability for noninitialized phones and the importance of the issue from a public safety perspective lead us to conclude that we should seek additional information in this Further Notice of Proposed Rulemaking in order to make an informed decision on this matter. Therefore, we are here seeking comments on possible technical solutions to the call back issue, and on several, more narrowly focused options, based on the present record, including that all carrier-donated handsets should be labeled and initialized on a limited basis to enable call back by a PSAP, and that all newly-manufactured 911-only handsets should be labeled appropriately and should provide for return calls from the PSAP. We seek specific comment on our proposals as well as our other inquiries identified below.

III. DISCUSSION

5. **Background.** As indicated, the Public Safety Entities' request that the Commission "update the record on technical solutions that may be possible in the near future" to provide call back for noninitialized phones has elicited conflicting responses. Comments filed by public safety interests assert that a technical means either exists or can be easily devised to allow PSAPs to identify noninitialized 911 calls and to return the calls if necessary.[10] A majority of wireless service providers disagree, noting, in support, that no viable technical solution to the call back issue has been identified or endorsed by the broad-based Wireless E911 Implementation Ad Hoc Group (WEIAD),[11] and alleging that the development and implementation of a technical solution would divert carrier resources from compliance with the Commission's E911 Phase I and II rules.[12] Suggestions for resolving the call back problem range from assigning a prescribed series

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[8] *See* "Comment Sought on Request for Further Consideration of Call Back Number Issues Associated With Non-Service Initialized Wireless 911 Calls," DA 00-1098, rel. May 18, 2000. *See also* Wireless E911; Call Back Number Issues Associated With Non-Service-Initialized Wireless 911 Calls, CC Docket No. 94-102 and WT Docket No. 00-80; DA 00-1098; 65 Fed. Reg. 35601 (June 5, 2000).

[9] *See* List of Parties in Appendix A.

[10] *See, e.g.*, WCA Reply Comments at 2, 4-5, 8. ICSA, representing a group of companies that sells and services cellular phones and public safety communications equipment, calls upon the Commission to mandate the use of pseudo numbers or Mobile Identification Numbers (MINs) unique to the subscriber that would allow special treatment of 911 calls from noninitialized handsets, so that switch makers will be forced, by carrier demand, to develop this technology. ICSA Comments at 3-5. ICSA also advocates changing Commission rules (most notably, section 22.919) to permit reprogramming of the Electronic Serial Number (ESN) in inactivated car phones to match the ESN for the subscriber's portable phone so that car phones can serve as extensions of portable phones, with no cost to carriers or PSAPs. *Id*. at 4.

[11] *See* Verizon Comments at 3-4; CTIA Comments at 3-4. WEIAD is composed of representatives from the wireless industry, the public safety community, and consumer groups. *See* Report of CTIA, PCIA, APCO, NENA, NASNA, ALLIANCE, CC Docket No. 94-102, filed Feb. 1, 1999, at 7-8.

[12] *See, e.g.*, BellSouth Comments at 2; SBC Comments at 2-3; Verizon Comments at 3-4. Both CTIA and AT&T allege that imposing a technical solution giving all noninitialized phones call back capability would result in "parallel call delivery systems," the costs of which would exceed those for Phases I and II of E911 combined. CTIA Comments at 2-3; AT&T Reply Comments at 1.

of numbers or letters to noninitialized phones to notify the PSAP that no call back is possible,[13] to assigning a temporary number to call back.[14] As an alternative to a technical solution, a majority of wireless carriers, in particular, advocate education and labeling requirements to alert consumers to the limitations of 911-only and other noninitialized handsets.[15]

6. **Discussion.** In this proceeding, we seek comment on various possible solutions to the call back problem for noninitialized phones, as well as additional information to augment the minimal data that have been provided indicating the actual percentage of wireless 911 calls from non-initialized phones that have required call back by the PSAP.[16] The record indicates that the wireless industry has begun to undertake measures that will help to alleviate the call back problem. For example, many carriers donate service-initialized handsets to donor programs, which permit call back by certain designated callers, including PSAPs.[17] Additionally, at least one manufacturer of 911-only phones encodes its handsets with a standard, nondialable number that appears on the PSAP's screen and notifies the dispatcher that no return call is possible and that the call should be handled accordingly.[18] We recognize that these measures help to alleviate the problem identified by the Public Safety Entities, either by providing call back capability or by providing notice to the PSAP that a return call is not possible. We continue, however, to be alerted to, and contend with, various problems attributed to the call back issue we address here. Under the circumstances, and for those reasons set forth below, we solicit additional comments on alternative solutions to the call back issue.

7. In assessing the need for additional Commission action with respect to noninitialized phones, we seek further information concerning the scope of the problem as it exists today, as well as its anticipated scope going forward. How often are such calls occurring, and what are their anticipated growth rates? As discussed more fully below, we also are seeking additional

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[13] *See, e.g*., SBC Comments at 4-5; SBC Reply Comments at 1; Public Safety Entity Reply Comments at 3-4. In contrast, Alltel alleges that the marketing of 911-only handsets should be prohibited. Alltel Comments at 2.

[14] *See, e.g*., Public Safety Entities Comments at 3; WCA Reply Comments at 2, 7-8. WCA advocates a solution involving Temporary Local Directory Numbers (TLDNs), which are used in the roaming context and assigned for up to 24 hours, citing patents allegedly obtained by Verizon and using the TDLN method. WCA Reply Comments at 2, ftn. 7, 7, ftn. 37. *But see* CTIA comments to the contrary, contending that TLDNs are "valid" for only 20 seconds and that their need for a subscriber code unique to the particular handset would result in either no connection or connection with the subscriber to whom the phone number (as opposed to the handset's electronic serial number or ESN) has been reassigned. CTIA Comments at 4-6. WCA also advocates a "very small change in the [911-only] handset to prevent the handset from sending a hang up signal during a 911 call. WCA Reply Comments at 5.

[15] *See, e.g*., CTIA Comments at 8-9; VoiceStream Comments at 4; BellSouth Comments at 3; Verizon Comments at 7; VoiceStream Comments at 4. *See also* SCC Comments at 5. Although they prefer a technical solution, public safety interests endorse labeling and consumer education concerning the call back limitations of non-service-initialized wireless phones. *See, e.g.,* WCA Reply Comments at 7.

[16] WCA estimates that the need for call back is "under two percent." WCA Reply Comments at 2.

[17] CTIA Comments at 3; SBC Comments at 3. *See* ftn. 24, *infra*, and accompanying text.

[18] Magnavox manufactures and markets the Magnavox Mobile 911. In the absence of such a number, the PSAP's Phase I screen might display the ten-digit trunk number assigned by the local wireline service provider for billing purposes, which would be indistinguishable from a dialable number.

information on the projected costs associated with implementing the possible solutions identified, including their anticipated impact on numbering resources, as well as their respective benefits to public safety.

8. Because of the inadequacy of the present record and our uncertainty as to whether a general technical solution exists and whether its development and implementation would divert resources from Phase I and II implementation, we are particularly interested in the following. We seek comment on whether a variation on the use of Temporary Local Directory Numbers (TLDNs), presently used for roamers, could be employed to provide call back capability for noninitialized phones.[19] If so, what would be the costs of such a solution? If not, what are the specific technical impediments to its adoption?[20] In addition, we seek comment on whether pseudo numbers or Mobile Identification Numbers (MINs) unique to the subscriber could be assigned to noninitialized phones to provide call back capability. If so, what would be the costs of this solution? If not, what are the specific technical impediments to its use?[21]

9. As an alternative to a general, technical solution, which may not be technically feasible or cost-effective, we are considering, based on our preliminary assessment of the comments, requiring that all carrier-donated handsets be initialized on a limited basis to enable call back by the PSAP and that these handsets be labeled as such. We are also considering requiring that all 911-only handsets permit call back by the PSAP and that they, too, be labeled appropriately. These, as well as other possible solutions discussed below, are to be distinguished from the general technical solutions about which we inquire above and which could, conceivably, provide call back capability for all noninitialized phones, regardless of source or type.[22]

10. The call back problem arises in several specific contexts. The first type of situation involves calls made from noninitialized wireless phones acquired through donor programs by at risk users such as the elderly or victims of domestic violence. Several options exist for addressing the lack of call back capability for such phones, including the option to refrain entirely from regulating their distribution. However, as a preliminary matter, we are reluctant to take no action with respect to noninitialized handsets distributed to at-risk users through donor programs. The particular needs of the at-risk populace served by these donor programs emphasizes the potential for adverse consequences that might flow from a PSAP's inability to ascertain the caller's location or needs because of a premature disconnection and inability to recontact the 911 caller. We seek comment on whether a solution to the call back problem for donated handsets is appropriate.

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[19] TLDNs are assigned to a roamer by the local wireless carrier to facilitate delivery of a call outside the roamer's service area. When the roamer's phone number is dialed, the call is initially routed to the roamer's home carrier for verification. In response to notification by the roamer's home carrier of an attempt to reach the roaming customer, the local carrier assigns a TLDN from a pool of such temporary numbers used to deliver calls to roamers in its service area. After the call is delivered, the TLDN is returned to the local carrier's pool of numbers reserved for such use.

[20] *See* ftn. 14, *supra*. *See also* WCA Reply Comments at 2, 4-5, 8.

[21] *See* ftn. 10, *supra*. *See also* ICSA Comments at 3-5; ICSA Reply Comments at 5.

[22] A general technical solution would apply to all non-initialized phones, including those obtained from a donor program or a friend and those equipped with a dial pad or a single 911 activation button.

11. We could require donors of noninitialized phones to label these handsets and to provide associated guidance to donees regarding the phone's limitations with respect to call back capability. This solution, like the limited initialization solution, would be limited to phones donated by carriers.[23] A labeling solution would focus users on the urgent need to provide information about their locations immediately upon contacting the PSAP. Such a solution could be easier to implement and less expensive for carriers than a limited initialization solution. Thus, it might be less likely to deter carriers from participating in donor programs. However, at this point, we question whether labeling alone is adequate to meet the needs of at risk donors.

12. As an alternative, we could require carriers giving handsets to donor programs to initialize service on a limited basis by assigning such handsets a call back number for the limited purpose of permitting call back by the PSAP. We note that CTIA's Wireless Foundation Guidelines require that each handset donated to its "Call to Protect," "ClassLink" or "Communities on Phone Patrol" programs be activated on a wireless network with a unique telephone number.[24] Thus, the feasibility of such an approach is clear. We are mindful that a limited initialization requirement could deter carriers from participating in donor programs.[25] We are also concerned that it could exacerbate the scarcity of numbering resources. We seek specific comment on these factors as well as other comments on the pros and cons of extending a CTIA-type limited initialization requirement to all carrier-donated handsets. We also seek information on the costs associated with limited initialization for carriers participating in a donor program.

13. The second category of noninitialized phones consists of 911-only phones, which limit out-going calls to 911 and presently are incapable of receiving any incoming calls, including those from PSAPs. These phones were developed and marketed in response to the Commission's earlier decision to require that all wireless 911 calls be forwarded to the appropriate PSAP without validation. The absence of a validation requirement permits 911 calls from phones not serviced by a wireless carrier and thus incapable of receiving incoming calls.

14. As in the case of donated handsets, here, too, we have the option of taking no action at this time. We seek comment on our tentative conclusion that a solution to the call back problem for 911-only phones is warranted because it will help to ensure that PSAPs obtain sufficient information to deliver emergency 911 services to consumers whose sole purpose in purchasing a wireless phone is obtaining access to those services. We seek comment on whether a solution to the call back problem for 911-only phones is appropriate.

15. Instead of taking no action, we could require all manufacturers of 911-only phones to follow Magnavox's practice of encoding a standardized nondialable "telephone number" in the handset, which would provide notice to the PSAP that the 911 caller's handset lacks call back

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[23] The E911 rules set forth in section 20.18 apply to Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Geographic Area Specialized Mobile Radio Services and Incumbent Wide Area SMR Licensees in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) . . . solely to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls." 47 CFR 20.18(a).

[24] *See* CTIA Comments at 3.

[25] *But see* WCA Reply Comments contending that tax incentives available to carriers for such donations outweigh any such disincentives. WCA Reply Comments at 3, ftn. 15.

capability.[26] The requirement would apply only prospectively, and would be limited to newly-manufactured handsets. The use of a standardized nondialable telephone number would enable a PSAP to recognize that location information must be obtained quickly from the 911 caller since call back is impossible. However, requiring the encoding of a nondialable number could raise the price of 911-only handsets, making them available to fewer persons without financial means. Although some handsets are already encoded with a nondialable number, the record lacks information concerning any increase in price attributable to the addition of this feature. We are concerned that a price increase, if applicable, would not be cost efficient because the solution itself is limited and does not provide the offsetting benefit of call back capability for those members of the public able to afford such handsets. We seek comment on the benefits and costs of requiring manufacturers of 911-only handsets to encode a standardized non-service initialized "telephone number" in the handset and the cost effectiveness of such an approach.

16. A second alternative for 911-only phones would be a requirement that manufacturers label these phones and educate consumers regarding the absence of call back capability. Requiring manufacturers to label 911-only handsets would put consumers on notice concerning the product's capabilities and limitations. The requirement would apply only prospectively and would not cover previously marketed handsets. It could be easier and less expensive to implement than an encoding requirement or a mandatory call back requirement. However, we are concerned that labeling, like encoding a nondialable number, is insufficient to ensure the benefits of our E911 requirements because it cannot take the place of a PSAP's ability to recontact a 911 caller if the PSAP needs vital information concerning the caller's location or specific emergency needs prior to dispatching emergency services. We seek comment on the benefits and costs associated with a labeling solution and the effectiveness of such an approach.

17. Instead of an encoding or labeling requirement, we are considering a requirement that manufacturers modify newly-manufactured 911-only phones to permit return calls from PSAPs. The requirement would apply only prospectively and would not cover previously-manufactured handsets. It would make basic, effective E911 service available to all individuals regardless of their ability to pay for, or desire to subscribe to, wireless services and would solve the 911-only call back problem while enabling carriers to focus their resources on the implementation of Phases I and II. However, we are concerned that a call back requirement, although limited to return calls from PSAPs, might be difficult to implement and could raise the price of 911-only handsets significantly, making them available to fewer persons without the financial means to afford mobile telecommunications services. We are also concerned that a limited call back requirement could be a disincentive to the manufacture of 911-only handsets and could thus eliminate or reduce access to a cost-effective means of providing emergency services to persons otherwise unable to afford them. We seek comment on the benefits and costs of requiring manufacturers of 911-only handsets to provide limited call back capability and the cost effectiveness of such an approach. We also seek comment on whether such a solution would exacerbate the numbering shortage.

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[26] *See* ftn 18, *supra*, and accompanying text. Manufacturers can be required to comply with this requirement under the Commission's equipment authorization jurisdiction. *See* 47 U.S.C. 303(e) and Subpart J of Part 2 of the Commission's regulations. *See also* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Second Report and Order*, 14 FCC Rcd 10954, 10992-93 (para. 88) (1996), in which the Commission directed manufacturers of mobile units with analog cellular capability to incorporate an approved 911 call processing mode into such handsets.

18. We note a third category of noninitialized phones, which we tentatively conclude we cannot effectively address in the absence of a general technical solution to the call back problem, *i.e.* phones for which the service subscription has lapsed that continue to be held by the original owner, are given to friends or family members for emergency use.[27] This category of phones, like 911-only phones, was made available for use in calling 911 by the Commission's earlier decision to prohibit validation procedures for 911 calls. Although there appears to be no means available to us to deal with phones transferred among friends or family members, at least one commenter advocates an approach of permitting non-initialized handsets to be reprogrammed to the same ESN as the user's service-initialized handset.[28] However, we are concerned that this approach does not provide an effective solution for this category of phones and users. Were the ESN for an otherwise noninitialized phone to be reprogrammed as proposed, the PSAP attempting to return a 911 call could easily reach one of the phones other than that from which the 911 call was made, because both phones would have the same call back number and ESN, and the network would be unable to distinguish between them.[29]

19. Barring a technical solution applicable to all noninitialized phones,[30] we believe that the practical approach for noninitialized phones transferred among friends and family members is public education concerning the limitations of noninitialized phones, including those received from friends and family. Consumer education is a cost-effective means of addressing this issue and also appears to be in the carriers' interests in encouraging the use of initialized phones. We seek comment on the call back problem for phones transferred among friends and family members, in general, and on our belief that this segment of wireless E911 users would be served best by consumer education programs regarding the limitations of noninitialized phones in the E911 context.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Initial Regulatory Flexibility Act

20. As required by the Regulatory Flexibility Act (RFA),[31] the Commission has prepared a Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed

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[27] This general category would also include noninitialized phones bought at a yard sale, for example, or obtained by some other means and not subsequently initialized.

[28] *See* ftn 10, *supra*.

[29] We note that a Notice of Proposed Rulemaking issued in the Biennial Review proceeding proposes to eliminate the restriction on reprogramming in section 22.919 because better means have been developed by the industry for preventing fraud since the rule against reprogramming was issued. *See* Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, FCC 01-153, rel. May 17, 2001.

[30] *See* para. 8, *supra*.

[31] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Rulemaking. *See* Appendix B, *infra*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Further Notice of Proposed Rulemaking.

B. Paperwork Reduction Analysis

21. The actions proposed in this Further Notice of Proposed Rulemaking include a labeling requirement. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on this labeling requirement under the Paperwork Reduction Act of 1995. Public and agency comments are due 60 days after publication of this document, or summary thereof, in the Federal Register. OMB comments are due 120 days from the date of publication of this document or summary in the Federal Register. Comments must be separately identified with a heading to indicate that they are in response to this inquiry. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Ed Springer, OMB Desk Officer, Room 10236 New Executive Office Building, 725 Seventeenth Street, N. W., Washington, D.C. 20503, or via the Internet to Edward.Springer@omb.eop.gov.

C. *Ex Parte* Presentations

22. This Further Notice of Proposed Rulemaking is a permit-but-disclose notice and comment rulemaking proceeding. Therefore, members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's rules.[32]

D. Comment Filing Dates

23. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments in response to this *Notice* on or before July 9, 2001 and reply comments on or before August 8, 2001. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.[33] Comments filed through the ECFS can be sent via the Internet to: <http://www.fcc/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form<your e-mail address>." A sample form and directions will be sent in reply.

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[32] 47 CFR §§ 1.1202, 1.1203, 1.1206(a).

[33] *See In re Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd. 11322 (1998) (amending Parts 0 and 1 of the Commission's rules to allow electronic filing of comments and other pleadings).

24. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The WTB contact for this proceeding is Jane Phillips.

E. Further Information

25. For further information, contact the Policy Division of the Wireless Telecommunications Bureau, at (202) 418-1310.

F. Ordering Clauses

26. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310, this Further Notice of Proposed Rulemaking is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A

LIST OF PARTIES RESPONDING TO PUBLIC NOTICE

Request for Further Consideration:

Texas Commission on State Emergency Communications, Texas Emergency Communications Districts, the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc., and the National Association of State Nine-One-One Administrators (Public Safety Entities)

Comments:

AT&T Wireless Services, Inc. (AT&T)
Alltel Corporation (Alltel)
BellSouth Corporation (BellSouth)
Independent Cellular Services Association, MT Communications and EE911CELLULAR.COM (ICSA)
Cellular Telecommunications Industry Association (CTIA)
Knoxville Police Department (Knoxville)
SBC Wireless Inc. (SBC)
SCC Communications Corp. (SCC)
Secure Alert, LLC (SecureAlert)
Public Safety Entities
Verizon Wireless (Verizon)
VoiceStream Wireless Corporation (VoiceStream)
Wireless Consumers Alliance, Inc. (WCA)

Reply Comments:

AT&T
CTIA
ICSA
Public Safety Entities
SBC
SecureAlert

Appendix B

INITIAL FINAL REGULATORY FLEXIBILITY ANALYSIS
FURTHER NOTICE OF PROPOSED RULEMAKING
CC Docket No. 94-102

As required by the Regulatory Flexibility Act (RFA),[34] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM), CC Docket No. 94-102. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the *Federal Register*. *See id.*

A. NEED FOR, AND OBJECTIVES OF, THE PROPOSED RULES

The NPRM solicits additional comment regarding enhanced 911 (E911) service to wireless phones without call back capability, including non-service initialized phones issued through donor programs and 911-only phones that limit usage to outgoing 911 calls and are incapable of receiving any incoming calls. The Commission sought comment earlier on the call back issue, in response to a request for further consideration filed by several public safety answering points (PSAPs). However, conflicting assertions regarding technological constraints on call back capability for noninitialized phones and the importance of responsive E911 in general and of facilitating PSAP response to E911 calls leads the Commission to conclude that additional information is necessary for an informed decision on this matter.

B. Legal Basis for Proposed Rules

The proposed action is authorized under Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 303, 308, 309(j), 310.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[35] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are

[34] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[35] 5 U.S.C. § 603(b)(3).

appropriate for its activities.[36] Under the Small business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[37] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[38] Nationwide, as of 1992, there were approximately 275,801 small organizations.[39]

The definition of "small governmental entity" is one with populations of fewer than 50,000.[40] There are 85,006 governmental entities in the nation.[41] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,00. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000.[42] The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

This NPRM could result in rule changes that, if adopted, would affect small entities that currently are or may become licensees in the cellular, broadband Personal Communications Services (PCS), or Specialized Mobile Radio Services.

Cellular Equipment Manufacturers. The proposed labeling requirement, if adopted, will affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular equipment manufacturers is considerably lower than 920. Under SBA regulations, a "communications equipment manufacturer," which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern.[43] Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer

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[36] *Id*. § 601(3).

[37] *Id*. § 632

[38] *Id*. § 601(4).

[39] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[40] 5 U.S.C. § 601(5).

[41] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[42] *Id*.

[43] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 3663.

employees and would therefore be classified as small entities.[44] Using our current estimate of cellular equipment manufacturers and the previous percentage estimate of small entities, we estimate that our current action may affect approximately 837 small cellular equipment manufacturers.

Cellular Radiotelephone Service. Neither the Commission nor the SBA has developed a definition of small entities specifically for cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone communications. This provides that a small entity is a radio telephone company employing no more than 1,500 persons.[45] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1, 178 such firms, which operated during 1992, had 1,000 or more employees.[46] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 808 small cellular service carriers that may be affected by these proposals, if adopted.

Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[47] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[48] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[49] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90

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[44] U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC code 3663 (estimate created by the Census Bureau under contract to the Office of Advocacy, SBA).

[45] 13 C.F.R. § 121.201, SIC code 4812.

[46] 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

[47] *See* Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52 (paras. 57-60) (1996); *see also* Section 24.720(b) of the Commission's Rules, 47 C.F.R. §24.720(b).

[48] *See Id*. at 7852 (para. 60).

[49] *See, e.g*., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (paras. 114-20) (1994).

winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[50] On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, and the 48 winning bidders in the reauction, for a total of approximately 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. In addition, the Commission anticipates that a total of 422 licenses will be auctioned in the broadband PCS reauction of the C & F Blocks that began December 12, 2000. Therefore we conclude that the number of additional C & F Block broadband PCS licensees that may ultimately be affected by these proposals could be as many as 422.

Specialized Mobile Radio (SMR). Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[51] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. The auction of the 1,020 SMR geographic area licenses for the 900 MHz SMR band began on December 5, 1995, and was completed on April 15, 1996. Sixty winning bidders for geographic area licenses in the 900 MHz band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

The lower 230 channels in the 800 SMR band are divided between General Category channels (the upper 150 channels) and the lower 80 channels. The auction of the 1,053 800 MHz SMR geographic area licenses (1,050-800 MHz licenses for the General Category channels, and 3 – 800 MHz licenses for the upper 200 channels from a previous auction) for the General Category channels began on August 16, 2000, and was completed on September 2, 2000. At the close of the auction, 1,030 licenses were won by bidders. Eleven winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 2,800 800 MHz SMR geographic area licenses for the lower 80 channels in the 800 MHz SMR service began on November 1, 2000, and was completed on December 5, 2000. Nineteen winning bidders for geographic area licenses for the lower 80 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz bands. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[52]

220 MHz Radio Service – Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. The Commission has adopted criteria for defining

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[50] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

[51] Id. § 90.814(b)(1).

[52] 47 C.F.R. § 90.814(b)(1).

small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. The Commission has held two auctions for Phase II licenses for the 220 MHz band. Fifty-three (53) winning bidders qualified as small or very small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

If certain options discussed in the FNPRM are adopted, all carrier-donated handsets would be required to be initialized on a limited basis to enable call back by a PSAP and labeled accordingly. Furthermore, all 911-only handsets could be required to permit call back by PSAPs and be labeled accordingly. In both instances, this would involve assigning the handsets a phone number and accompanying software upgrades. Details of these proposed requirements are discussed in paragraphs 7 through 19 of the full FNPRM, supra. As noted in the FNPRM, the compliance requirements for the various technical alternatives are not fully known. The FNPRM invites comments on alternatives to these options for addressing the call-back issue, and any possible compliance burdens associated with the alternatives.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. §603(c).

The critical nature of the E911 proceeding in general and in particular of providing PSAPs with the flexibility to contact the caller in an emergency situation limits the Commission's ability to provide small carriers with a less burdensome set of E911 regulations than those placed on large entities. A delayed or less than adequate response to an E911 call can be disastrous regardless of whether a small carrier or a large carrier is involved. The importance of PSAP call back capability in wireless E911 situations is that, in the excitement of a crisis situation, the caller could easily forget to provide the PSAP with location information and, the PSAP might not be able to trace the location of a wireless phone because the individual could be moving from place to place, and may not be able to call the handset user back to verify a location. The PSAP would, at worst, be unable to respond, or would respond on a delayed basis.

PSAPs and the majority of wireless carriers who commented on the call-back issue represent two different perspectives on the issue. (*See* paragraph 5 of the NPRM.) PSAPs, who initially asked that the Commission "take additional comment and revisit the call back number issues to determine if any further Commission action is necessary or appropriate," express concern that noninitialized phones provide either no call back information or outdated or inaccurate information when used in areas where E911 services have been implemented.

Comments filed by public service interests assert that a technical solution to the call back issue either exists or can be easily devised to allow PSAPs to identify noninitialized E911 calls and to return the calls if necessary. A majority of wireless service providers, on the other hand, disagree, noting that no viable technical solution has been identified or endorsed by the Wireless E911 Implementation Ad Hoc group.

As indicated in paragraph five of the NPRM, suggestions of record for resolving the problem range from assigning a prescribed series of numbers or letters to noninitialized phones to notify the PSAP that no call back is possible, to assigning a temporary call back number or emergency service routing key that permits call back. A majority of wireless carriers, in particular, advocate education and labeling requirements to alert consumers to the limitations of E911-only and other noninitialized handsets.

In the absence of sufficient information supporting a general technical solution, the Commission is considering several possible solutions to the call-back problem, including a requirement that all carrier-donated handsets be initialized on a limited basis to enable call back by a PSAP and be labeled as such, and a requirement that all 911-only handsets permit call back by a PSAP and bear a label apprising users of their limitations.

Paragraphs 9-12 of the NPRM discuss options regarding carrier-donated handsets. The most obvious alternative would be for the Commission to decline to adopt any regulation regarding their distribution. The Commission rejects this option as a preliminary matter because it would effectively nullify the benefits of E911 where the PSAP is unable to ascertain the location or needs of an E911 caller. Another alternative would be for the Commission to adopt a regulation merely requiring that donors label donated handsets and provide associated guidance to donees regarding their handset's lack of call back capability. The labeling option would focus the user on the urgency of the E911 caller's providing location information immediately upon contacting the PSAP, and would be easier and less expensive for carriers than a limited initialization solution. However, the Commission has concerns that a labeling requirement may be inadequate, by itself, to satisfy the needs of the populace in question. The final option, a limited initialization solution, could exacerbate the scarcity of phone numbering resources and could deter carriers from participating in donor programs. However, the public safety benefits offered by a limited initialization solution outweigh the possible negative repercussions. Thus, the Commission solicits comment on a requirement that carrier-donors initialize service on a limited basis by assigning donated handsets a call back number for the limited purpose of permitting call back by PSAPs. The Commission seeks comment on the effects of such a requirement on small businesses, and on the extent of the burden of updating software to accommodate PSAP call back capability on donated handsets.

Paragraphs 13-17 of the NPRM consider alternative solutions to the call back problems of 911-only phones, which limit out-going calls to 911 and presently are incapable of receiving any incoming calls. Again, the option of taking no action is unacceptable. Alternatively, the Commission could require all manufacturers of 911-only phones to encode a standardized non-service initialized "telephone number" that would provide notice to PSAPs that the handset used for a E911 call lacks call back capability. On the positive side, this alternative would put the PSAP on notice that location information must be obtained quickly from the E911 caller as call back is impossible. On the other hand, this alternative would apply only prospectively and would not cover previously marketed handsets. It could also raise the price of 911-only handsets, providing only limited service to those who can afford them. A third alternative would require that manufacturers of 911-only phones label the handsets and educate consumers regarding the absence of call back capability. The Commission is concerned that, while a labeling and

education requirement would be easier and less expensive to implement than a limited initialization requirement, the requirement would not cover handsets previously marketed by manufacturers and would be insufficient to reduce the threat to public safety that a lack of vital information concerning the caller's location or specific emergency needs represents.

The Commission is considering a requirement that these phones be modified to allow a return call by the PSAP. The requirement would apply only prospectively and would not cover previously marketed handsets. The disadvantages of this approach include the possibility that the additional costs of implementing such a solution could be a disincentive to the manufacturers of 911-only handsets, thus eventually removing them from the marketplace or driving the cost up. Additionally, the assignment of unique handset numbers to such phones could exacerbate the numbering shortage.

Finally, the Commission, as discussed in paragraphs 18-19 of the NPRM, has identified a third category of noninitialized phones, *i.e.* noninitialized phones for which the service subscription has usually lapsed, which have been given to friends or family members. At least one comment advocates permitting a user's noninitialized handsets to be reprogrammed to the same ESN as the user's service-initialized handset. The Commission concludes that this option would not solve the call back problem for this category of users, and could, in fact, create new opportunities for delay and confusion for the PSAP trying to locate the caller. In such cases, the PSAP attempting to call back could easily reach a phone other than the one from which the E911 call was made, because several phones would have not only the same call back number but the same ESN, and the network would be unable to distinguish between them. It appears that the Commission has no means available to it to bar the use of such phones or to mandate public education with respect to their limitations and that carrier publicity concerning the disadvantages of relying on noninitialized phones, including those received from friends or family, would be most efficacious in alleviating the call-back problem with respect to these phones.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.